

C O U N T Y m 401 "

July 1, 1953

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CONCORD, N.H.

The Honorable Hugh Gregg
Governor of New Hampshire
Concord, New Hampshire

Dear Governor Gregg:

You have inquired as to whether or not your emergency fund must be utilized to pay costs incurred for fighting fires prior to the use for this purpose of funds not otherwise appropriated.

It would appear that serious doubt exists as to whether you are permitted under existing law to draw your warrant upon funds not otherwise appropriated without previously exhausting the emergency fund to meet a conflagration which is clearly an emergency. There is presently available in the salary adjustment fund for the biennium ending June 30, 1953 approximately \$80,000. Under s. 2, c. 256, Laws of 1951, the salary adjustment fund is "available . . . for transfer to departments or institutions for emergency personnel needs or the employment of temporary help, subject to the approval of the governor and council".

The statutory duty of prevention and control of forest fires is imposed upon the Director of Forestry. S. 4, c. 233, R. L., as amended by s. 1, c. 244, Laws of 1949. Under s. 5, c. 233, R. L., as amended by s. 2, c. 244, Laws of 1949, the Director of Forestry must see to it that district chief forest fire wardens and other fire wardens "take such action as is authorized by law to prevent and extinguish forest fires . . ." Under the established administrative procedures for executing statutory duties imposed upon the Director of Forestry, personnel employed for purposes of extinguishing forest fires are, in my opinion, temporary personnel of the state and since their employment is necessary to meet the duties imposed upon the Director of Forestry under the statutes, such employees, when used to extinguish forest fires may also be considered as "emergency personnel".

The Honorable Hugh Gregg -- 2.

It is therefore clear that the balance in the salary adjustment fund as of June 30, 1953 may be applied toward the payment of wages incurred by such emergency personnel. This fund may be utilized before drawing upon the emergency fund.

We are advised that there is available in the emergency fund for the fiscal year ending last night approximately \$71,000. An opinion of the Deputy Attorney General, dated August 29, 1952, states that expenses of combatting forest fires may only be met by payment from the emergency fund after the specific appropriation has been exhausted, which by implication appears to prohibit a deficiency bill for this purpose.

However, R. L., c. 233, as amended, provides that the Governor shall draw his warrant on the state treasurer in favor of towns for the portion of the bill for expenses of fighting forest fires for which the state is liable and says nothing about whether or not this warrant shall be a charge upon funds not otherwise appropriated. Whereas the duty on the part of the state to assist in the fighting of forest fires is mandatory and the language directing you to draw your warrant on the state treasurer for the state's portion of liability is mandatory, an ambiguity is apparent insofar as the statute appears to direct that you take a step toward the payment of funds not otherwise appropriated.

Therefore, it is respectfully suggested that in order to eliminate any question of personal liability on the part of the state treasurer and/or yourself and the Council, and/or officials of the Forestry and Recreation Department, an opinion of the Supreme Court be requested as to whether R. L., c. 233, s. 27 constitutes an authority to charge funds not otherwise appropriated.

A second question that might be advantageously certified to the Supreme Court at the same time is whether or not you must first exhaust the emergency fund and whether you are confined to the emergency fund and appropriated funds of the Forestry and Recreation Department for this purpose.

The emergency fund for the next biennium involves legislation in contemplation of many emergencies other than forest fires. The existence of such a fund appears to be necessary for adequate implication of executive authority. To deplete it either substantially or entirely during the first few days of the fiscal year for the single purpose of fighting forest fires would impair the operation of state government.

It should be noted that expenses for fighting forest fires on and after July 1, 1953 may not be paid out of the salary adjustment